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# Ayodhya Title Dispute

M Siddiq v. Mahant Suresh Das

## Day 56 Arguments: 1 October 2019

The Supreme Court is hearing the appeals to the 2010 Allahabad High Court judgment (<http://elegalix.allahabadhighcourt.in/elegalix/DisplayAyodhyaBenchLandingPage.do>) that divided the Ayodhya title among the Nirmohi Akhara, the Sunni Waqf Board and Shri Ram Virajman.

Last week (<https://www.scobserver.in/court-case/ayodhya-title-dispute/ayodhya-day-54-arguments>), the Sunni Waqf Board concluded its responses to the Akhara and Lord Ram's suits. The Board recognised the Akhara's management rights over portions of the property (outer courtyard) and questioned whether Shri Ram Virajman's suit is maintainable, given that the Akhara is the idol's shebait (while Shri Ram Virajman's suit was filed by the unaffiliated D.N. Agarwal). Further, it argued that the second plaintiff in Lord Ram's suit, Ram Janmabhoomi (birthland), is *not* even an entity with legal personhood.

Yesterday, Sr. Adv. K. Parasaran began his rejoinder arguments on behalf of Shri Ram Virajman. He rebutted the Sunni Waqf Board's argument that Ram Janmabhoomi is *not* juridical entity, submitting that a Hindu site can be divine, regardless of whether or not an idol is installed at it.

Today, Sr. Adv. Parasaran concluded his rejoinder submissions, after which Sr. Adv. C.S. Vaidyanathan began his, also on behalf of Shri Ram Virajman.

### *2.35 Ram Janmabhoomi has juristic personality*

Sr. Adv. K. Parasaran and C.S. Vaidyanathan rebutted Sr. Adv. Dhavan's argument that Ram Janmabhoomi does *not* have legal personhood. Sr. Adv. Dhavan had argued that as the 'birthland' has *not* physically manifested, it cannot be considered a juristic entity.

#### *2.35.1 Manifestation is irrelevant*

Sr. Adv. Parasaran argued that manifestation is irrelevant, as long as there is spirituality attached to the movable or immovable place of worship. He gave examples of several Hindu sites that are considered divine, but where no physical manifestation has taken place, such as the Chidambaram temple and Gnana Sabhai. Sr. Adv. Dhavan interjected, submitting that he had already established that at each of these sites a physical temple exists. Sr. Adv. Parasaran retorted that public Hindu worship is sufficient to establish a temple, referring to case law. He submitted that that to treat worshippers, who worship at a site without an idol, differently than those who worship at one with an idol would violate Article 25 of the Constitution.

### *2.35.2 No precedent would be set by recognising Janmabhoomi as a juristic personality*

The Bench inquired whether recognising the Ram Janmabhoomi as a juristic personality would set a precedent, whereby the court would have to accept every revered place as a juristic personality. Sr. Adv. Parasaran argued that the ramifications of accepting the Janabhoomi's juristic personality would not extend beyond the present case. He submitted that Hindu law has always been devised from instance to instance. He argued that the court could devise a method for assessing juristic personality status on a case-by-case basis.

### *2.35.3 Faith is sufficient to establish juristic identity*

Sr. Adv. C.S. Vaidyanathan added to Sr. Adv. Parasaran's arguments, submitting that faith and belief alone was sufficient to establish that the birthplace is a juristic entity. He rebutted Sr. Adv. Dhavan's argument that a dedication was required for a religious endowment to gain legal personhood.

### *2.36 Composite juristic entities can co-exist*

The Bench asked Sr. Adv. Parasaran whether Lord Ram was being invoked in both the idol as well as the bhoomi (place). It asked if the deity, as a juristic person, existed in a composite character. Sr. Adv. Parasaran submitted that several manifestations of just one deity may exist in a single temple. He argued that any number of juristic personalities can be attributed to a single institution. Further, he referred to case law to show that two juristic entities can co-exist in the same property.

Sr. Adv. Rajeev Dhavan interjected, submitting that Sr. Adv. Parasaran was introducing a new argument, which he should not be doing at the rejoinder stage. Sr. Adv. Parasaran responded that every proposition in a court of law is considered new. He submitted that it was for the Bench to decide whether to take into consideration the composite character argument.

### 2.37 *Res judicata* does not apply

Sr. Adv. Parasaran argued that the 1885 suit, wherein a Faizabad district court denied a Hindu Mahant's request to construct a temple at the site, does *not* apply *res judicata*. Sr. Adv. Naphade (for appellant F. Ahmed) had argued (<https://www.scobserver.in/court-case/ayodhya-title-dispute/ayodhya-day-55-arguments>) that the 1885 suit barred 'Hindu parties' from filing Ayodhya title suits under Section 11 of the Code of Civil Procedure, 1908 (<https://www.wipo.int/edocs/lexdocs/laws/en/in/in056en.pdf>) (CPC).

Today, Sr. Adv. Parasaran argued that the 1885 suit fell under the previous CPC (1882) and that hence *res judicata* could not apply to all the current suits, which were filed under the current 1908 CPC. Sr. Adv. Dhavan interrupted and argued that Sr. Adv. Naphade had already satisfied the Bench that even if the 1882 code applies, *res judicata* may still come into play.

### 2.38 Mahant is not a representative

Next, Sr. Adv. Parasaran argued that the original plaintiff did not represent the entire Hindu community, meaning that *res judicata* did *not* apply. He submitted that the Mahant (shebait) was only a '*sevak*' (caretaker), who could not claim to represent all

Hindu parties.

### *2.39 Allahabad High Court's reasoning was sound*

Sr. Adv. C.S. Vaidyanathan responded to Sr. Adv. Dhavan's submission that the Allahabad High Court had adopted a guesswork methodology in its judgment. Sr. Adv. Dhavan had argued ([https://scobserver-production.s3.amazonaws.com/uploads/ckeditor/attachments/225/RD\\_190903\\_-\\_NOTE\\_ON\\_METHODODOLOGY.pdf](https://scobserver-production.s3.amazonaws.com/uploads/ckeditor/attachments/225/RD_190903_-_NOTE_ON_METHODODOLOGY.pdf)) that the High Court judges had to resort to guessing and probabilistic reasoning when assessing the historical evidence. Sr. Adv. C.S. Vaidyanathan labeled Sr. Adv. Dhavan's assertions as '*ridiculous*' and emphasised that resonable conclusions can be reached from probabilistic reasoning, referring to the doctrine of the preponderance of probabilities. He quoted the classic textbook *Sarkar's Commentary on the Law of Evidence* (<https://www.amazon.in/Sarkars-Commentary-Law-Evidence-Bangladesh/dp/8189619039>) to defend the preponderance of probabilities doctrine.

### *2.41 ASI Report is reliable*

Sr. Adv. Vaidyanathan concluded his arguments by defending the reliability of the Archaeological Survey of India's (ASI) report, which indicated that a temple lay underneath Babri Masjid. Sr. Adv. Meenakshi Arora had disputed its reliability, saying it was based on conjecture and lacked consistency. Today, Sr. Adv. Vaidyanathan contested that the report should be considered expert evidence.

### *2.42 Excavated structure was not 'Idgah'*

Further, he disputed Sr. Adv. Arora's claim that the excavated structure could have been an Eidgah (open air enclosure used for Muslim prayer). He drew the Bench's attention to the remains of excavated walls, which he submitted lacked the common features of an Eidgah. He contended that the counsels for the Sunni Waqf Board had deliberately avoided presenting arguments on the walls - Sr. Adv. Dhavan interjected, insisting that they had referred to the walls. Sr. Adv. Vaidyanathan said he would return to the excavated walls in the next hearing on Thursday.

#### *2.43 Ram Janmabhoomi and Ram Janmasthan*

Sr. Adv. Vaidyanathan submitted that it was unnecessary to determine the precise birthplace of Lord Ram, by which he meant that it was not important to delineate where within the boundaries of the disputed site the deity was born. Upon the Bench's prompting, Sr. Adv. Parasaran distinguished between Ram Janmabhoomi and Janmasthan. He explained that while the former refers to a general area, possibly 'even the entire *Bharat*', the latter refers to the precise birth location.

#### *2.44 Miscellaneous points*

In addition to the above arguments, Sr. Adv. K. Parasaran and C.S. Vaidyanathan briefly presented arguments on other issues throughout the day. Their assertions can be found below.

Sr. Adv. Parasaran briefly touched on issues regarding the right to worship. He submitted that the principle of *parens patriae* must encompass the right to worship.

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Sr. Adv. Vaidyanathan responded to Sr. Adv. Dhavan's argument that Babur constructed the mosque on an empty site (where no temple lay). Remarking on a technicality, he argued that Sr. Adv. Dhavan should have said that the disputed property was *terra nullius* not *res nullius*. He submitted that *res nullius* and *res sacrae* derive out of the same components of Roman law.

The next hearing is on 3 October, when Sr. Adv. C.S. Vaidyanathan will conclude his rejoinder arguments. The Bench may also briefly hear rejoinders by Sr. Advs. Narasimha, Mishra, and S.K. Jain for G.S. Visharad, the Revitalisation Committee and the Nirmohi Akhara respectively. On Friday, 4 October, Sr. Adv. Dhavan will resume his arguments.

*The Bench heard Sr. Adv. K. Parasaran first until about 3 PM and then Sr. Adv. C.S. Vaidyanathan for the rest of the day. As both counsels repeated similar arguments, we have organised the report thematically, not chronologically. The Bench assembled at 11.39 AM. It rose for lunch at 12.56 PM and re-assembled at 2.05 PM. It again rose at 4 PM and reconvened at 4.16 PM. Finally it rose for the day at 5.09 PM.*

(Court reporting by Sanya Talwar)

## Case Documents

- 2010 Allahabad High Court Judgment  
(<http://elegalix.allahabadhighcourt.in/elegalix/DisplayAyodhyaBenchLandingPage.do>)

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